DAR COUNCIL

Presented to:
Army Contracting Agency

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Army (Policy and Procurement)
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Case Manager
Office of the
Defense Acquisition
Regulations System (DARS)
Directorate

April 2005

Overview

- DFARS Transformation
- Rulemaking Process
- Cases of interest
- Army Participation

DFARS Transformation

- Background
- Procedures, Guidance, and Information
- Future vision

AT&L Direction

- Conduct a comprehensive review and transformation of the FAR and DFARS
  - Reduce DFARS by 40%
- Include operational proceedings used to revise and implement the DFARS

Objectives:

Reduce regulation
Improve processes
Inject technology

Supports AT&L
• Goal 1 – Acquisition Excellence with Integrity
• Goal 2 – Resources Rationalized

Why?

- **Excessive/unnecessary regulation in some areas**
- **Reliance on the regs creates a checklist approach**
  - **Minimizes thought and analysis**
  - **Impedes creativity and innovation**
- **Our review determined that the rulemaking process is --**
  - **Resource intensive and paper-based**
    - ~300 people supported the FAR/DFARS creation
  - **Time consuming and non-responsive**
    - Idea to reality: 14 month average for FAR changes, 11 months for DFARS
  - **Burdensome**
    - Difficult to participate in the rule-making process
    - Blurred distinction between true “regulation” (what to do) and “guidance” (how to do it)

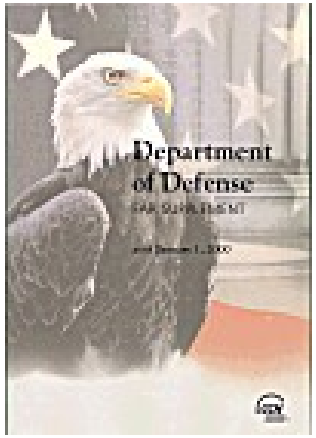
… but DFARS Matters

- DoD, the Hill, Industry promote DFARS
  - Consistency in business practices
  - Force of law
  - Transparency – public comment process
  - Discipline and accuracy
- Vehicle of choice to implement --
  - Departmental policies such as UID, RFID, Contractors on the Battlefield, DCMA Business Rules, domestic preference rules, Enterprise Software Initiative
  - Legislative initiatives such as SARA
  - IG/GAO recommendations – Competition on Schedules
- AT&L is the credible source for 50 years of historical knowledge of the acquisition process

DFARS has immediate world-wide impact upon publication

A New DFARS

DFARS, the <u>Regulation</u> --



- Requirements of law
- Mandatory DoD-wide policy
- Delegations of FAR authorities
- Deviations from FAR
- Policies/procedures with significant effect outside DoD internal operations

And…

- Links to Procedures, Guidance, and Information

Procedures, Guidance and Information ("PGI")

- Procedures
  - Mandatory DoD-internal procedures*
  - Optional DoD-internal procedures**
- Guidance**
  - Helpful explanations, samples, guides, tips, etc.
- Information**
  - Reference material

No significant impact on the public

Not a codified regulation

*Mandatory link in DFARS
**Optional link in DFARS

Why PGI?

VALUE

- Supports rapid change
- Fosters flexibility and innovation
- Distinguishes regulation vs procedure
- Shortens DAR Council and rule-making processes

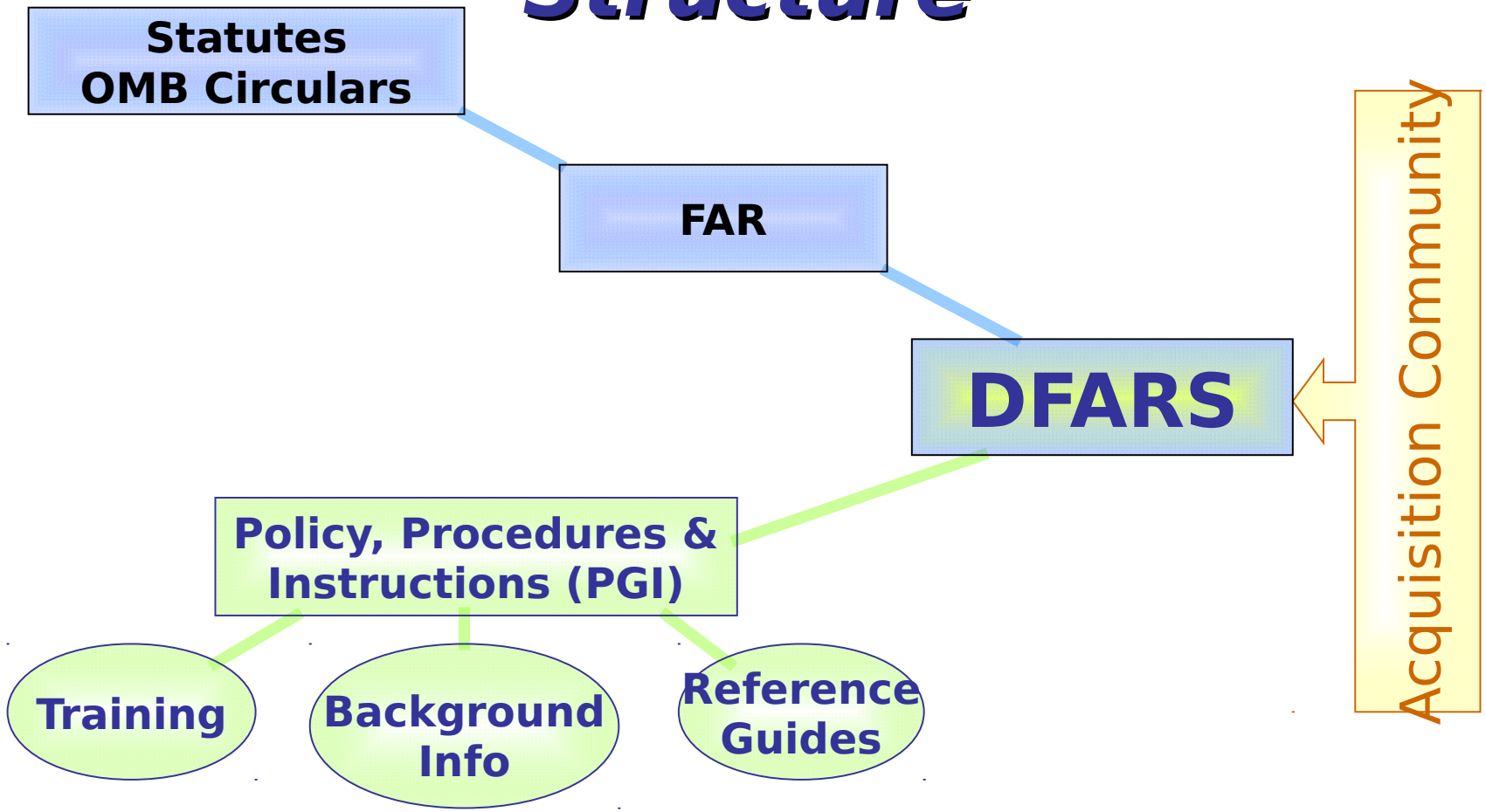
APPROACH

- Managed content (DARC direction and processes)
- Seamless access (Web based)

PGI Increment 2

- Incorporate enabling technology to provide seamless access to the FAR, applicable statutes, & Training.
- PGI managed through the PGI Governance board.
- Rewrite of the PGI using plain language, what does it mean to the CO, industry, and others.

The "To-Be" Information Structure



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DFARS PGI

Procedures, Guidance and Information

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Welcome to the DFARS PGI

Welcome to the Defense Federal Acquisition Regulation Supplement (DFARS), Procedures, Guidance and Information (PGI) Web page. DFARS PGI is being developed as a companion resource to the DFARS; a result of the DFARS Transformation effort chartered by the Under Secretary of Defense for Acquisition, Technology and Logistics (USD/AT&L). DFARS PGI is a new, web-based tool for the entire acquisition community to simply and rapidly access — via the World Wide Web — non-regulatory Department of Defense (DoD) procedures, and guidance and information relevant to FAR and DFARS topics. The DFARS remains the source for regulation, implementation of laws as well as DoD-wide contracting policies, authorities and delegations. In other words, DFARS will answer the questions, **"What is the policy?"** and **"What are the rules?"** DFARS PGI will connect the acquisition community to the available background, procedures and guidance and answer the questions, **"How can I execute the policy?"** and **"Why does this policy exist?"**

We believe DFARS PGI will not only provide a rapid method of disseminating non-regulatory material to contracting officers and the entire acquisition community, it will also serve as a real-time training tool by making relevant information available on your topic of interest. DFARS PGI is new and will be evolving in the months ahead. We'll move to simpler language, an easy-to-follow format and follow with new tools for searching and retrieving current and past information on FAR and DFARS requirements.

We hope you'll take advantage of the capabilities DFARS PGI presents today and in the future. We welcome your comments and input as it progresses through development. Don't hesitate to contact us with your ideas and comments.

A Companion Resource to the DFARS

PGI is a companion resource containing mandatory and non-mandatory internal DoD procedures, non-mandatory guidance and supplemental information used at the discretion of the contracting officer.

PGI will not contain policy or procedures that significantly affect the public and will not be published in the Federal Register or the Code of Federal Regulations. However, the HTML version of the DFARS contains links to the corresponding PGI sections.

The authority to issue PGI comes from DoD Directive 5000.35, Defense Acquisition Regulations Management and DFARS 201.301.

For more information, visit the About PGI page.

Web address -- DARS

http://www.acq.osd.mil/dpap/dars/

Questions or Comments? Contact DARS

DFARS PGI

Procedures, Guidance and Information

PGI Home | About PGI

The **MS Word** version of PGI is available here.
The **Adobe PDF** version of PGI is available here.

Download the **zipped files** of PGI in MS Word.
Download the **zipped files** of PGI in Adobe PDF.

Dear PGI visitors,
The current PGI is part of the DFARS Transformation. Because the Website is under constant change, and because the DFARS Transformation Integrated System is in development, the links to some of the training, background or policy may change. Please do not bookmark these pages.

The legend shows the icons representing training, policy and supplemental information. PGI, which has related material, will display the associated icon.

Legend

T Training Icon

DAU is currently undergoing changes in their cours listings. Please be patient as they upgrade thier system. Some links my be temporarily unavailable

S Supplemental Information Icon

P Policy Icon

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PGI 203.5--OTHER IMPROPER BUSINESS PRACTICES
(SEE DFARS 203.5 - POP-UP WINDOW, PGI VIEWER MODE)

PGI 203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

PGI 203.570-2 Prohibition period.

(a)(1) The contracting officer shall—

(i) Review any request for waiver; and

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(2) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition, Technology, and Logistics), who will forward the report to Congress as required by 10 U.S.C. 2408 (a)(3).

(b) Submit a copy of the determination to Bureau of Justice Assistance, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

Internet

SUBPART 203.5–OTHER IMPROPER BUSINESS PRACTICES

(Revised December 15, 2004)

203.502- Subcontractor
203.570 Prohibition
203.570- Scope
203.570- Prohibition
203.570- Contract

203.502-2 Subcontractor kickbacks.

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203.570-3 Contract clause.
Use the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defens
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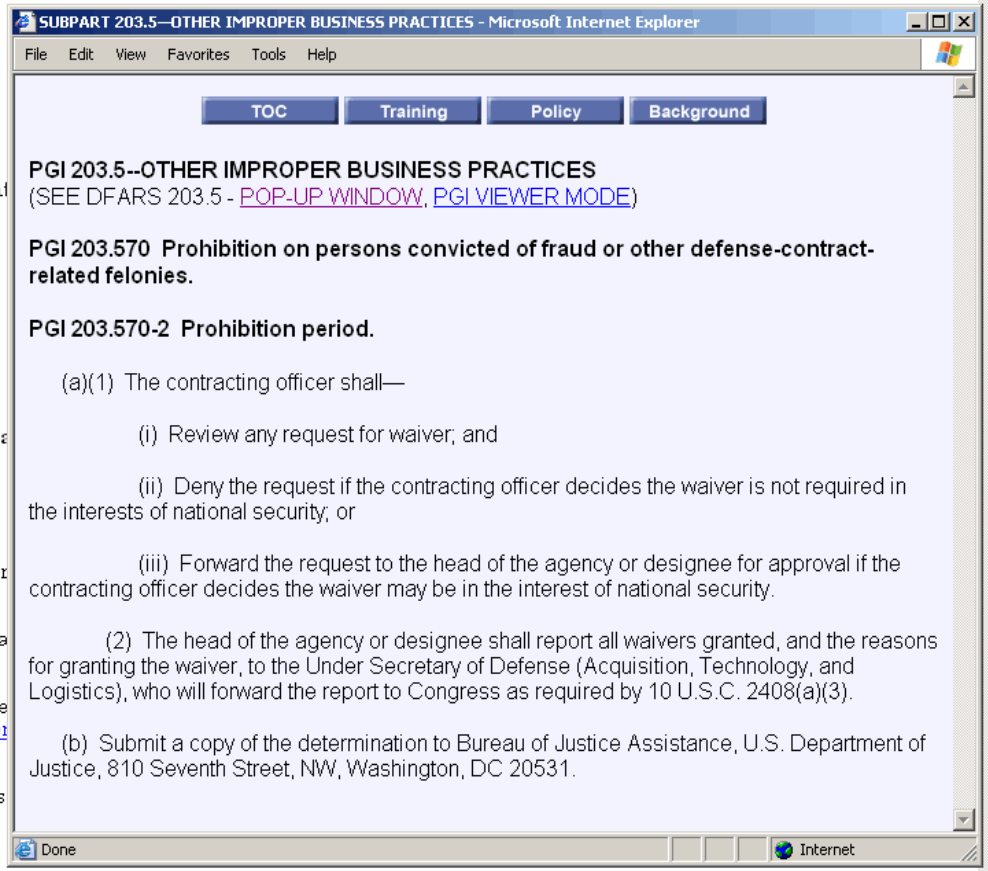
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Training

- CON 101 : The BAA training module is intended to demystify FAR Part 25 and DFARS 225 by providing explanatory materials and practical examples to clarify the main issues. This will enable the contract specialist and contracting officer to successfully navigate their way through all but the most unusual issues.
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Use the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

Policy

- September 13, 2004, memorandum from the Director of Defense Procurement and Acquisition Policy, Subject: Approval Levels for Sole Source Orders Under Federal Supply Schedules (FSSs) and Multiple Award Contracts (MACs)
- October 1, 2004, memorandum from the GSA Office of the Chief Acquisition Officer, Subject: Purchases on Behalf of Other Agencies

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WASHINGTON, DC 20301-3000

ACQUISITION, TECHNOLOGY AND LOGISTICS

SEP 13 2004

DPAP/DARS

MEMORANDUM FOR SENIOR PROCUREMENT EXECUTIVES
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Approval Levels for Sole Source Orders Under Federal Supply Schedules (FSSs) and Multiple Award Contracts (MACs)

On July 19, 2004, we changed Federal Acquisition Regulation (FAR) procedures for approving sole source orders under Federal Supply Schedules (FSS), establishing new approval levels and documentation requirements. The new approval levels were published in Federal Acquisition Circular 2001-24 and are consistent with the justification and approval (J&A) levels at FAR 6.304. These changes will better support our efforts to maximize competition when using FSS for supplies and services.

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(2) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition, Technology, and Logistics), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

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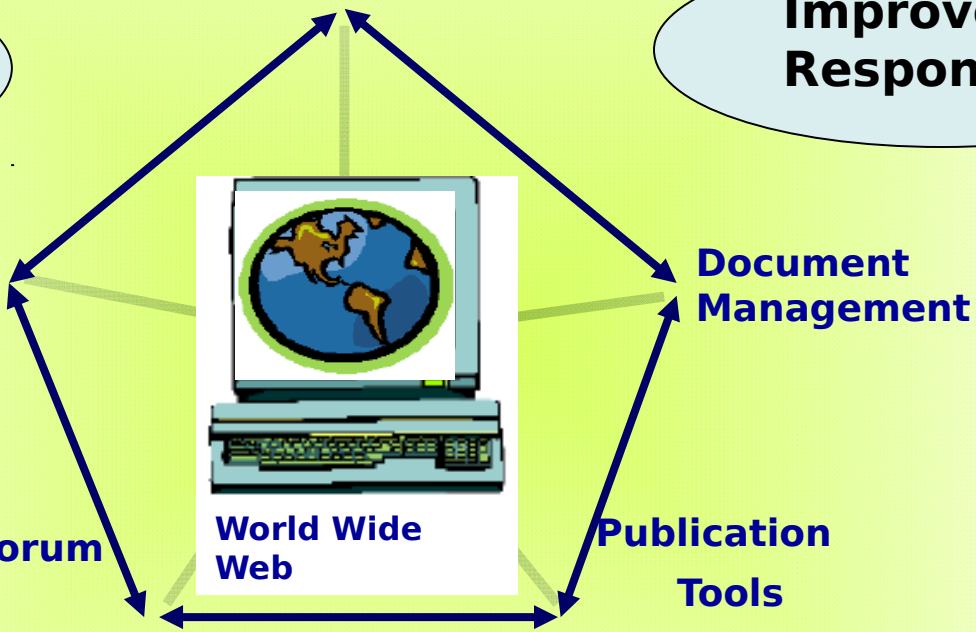
Technology

Enhance Transparency

Improve Responsiveness



Share Knowledge

Model for E-Rulemaking

Reduce Manpower

Impact

- For the Contracting Officer
- For Industry
- For the Public

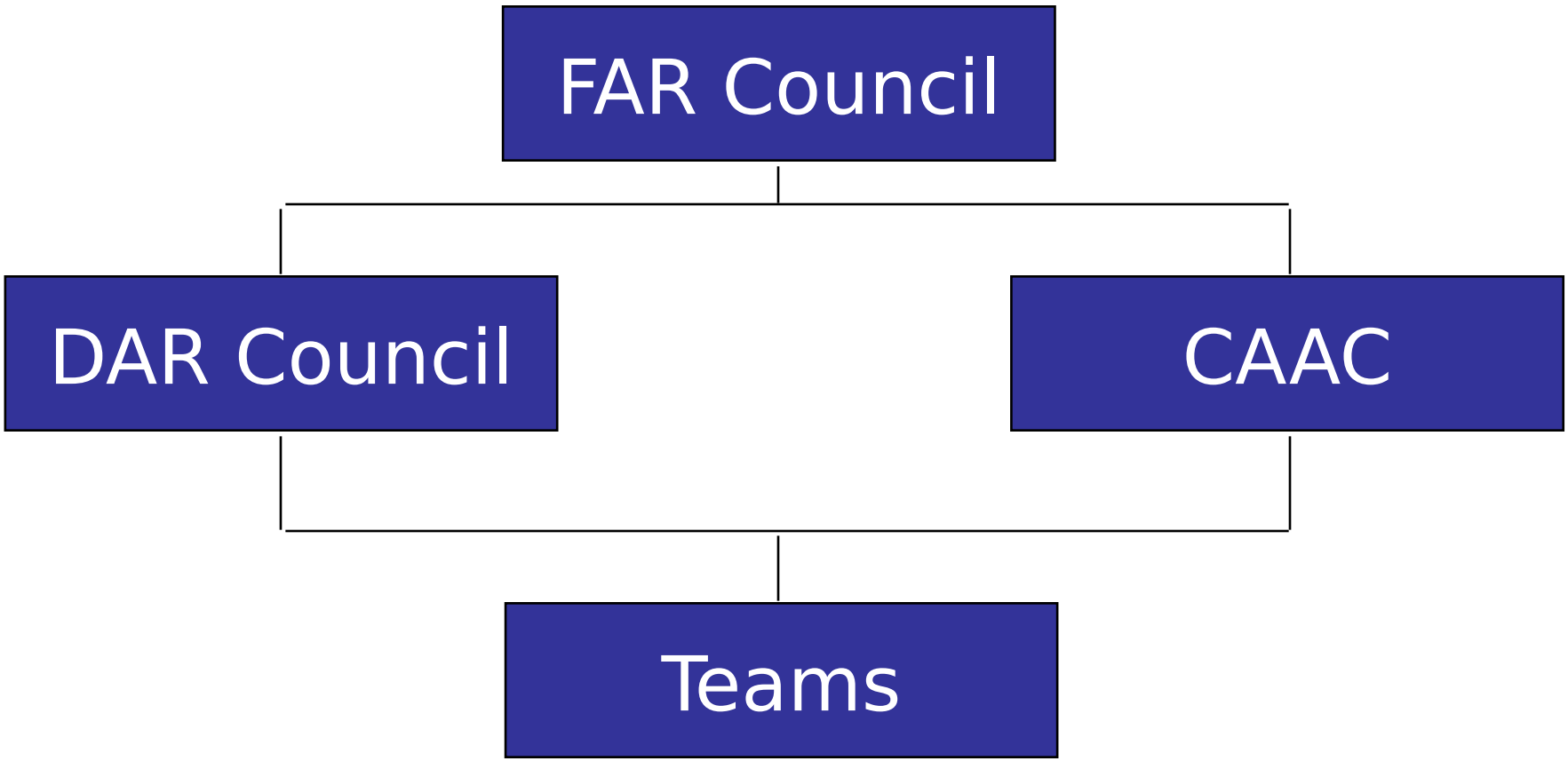
nsparency, Access, Knowledge, Participation

Transformation Summary

- AT&L recognized the need for change
- Unnecessary DFARS rules are being removed
  - Industry is concerned but supportive
- Process changes are systemic and enduring
  - PGI is a foundation for new knowledge management tools for the contracting officer and industry
- DTIS will facilitate further change to promote a responsive and transparent rulemaking process

Rulemaking Process

Council Structur



FAR Council

- Who they are-
  - David Safavian - Administrator for the Office of Federal Procurement Policy, OFPP
  - Dee Lee – Director, Defense Procurement and Acquisition Policy, DoD
  - David Drabkin, Deputy Chief Acquisition Officer, GSA
  - Tom Luedtke, Deputy Chief Acquisition Officer, NASA
- What they do-
  - Provide overall strategy to the DAR Council and CAAC
  - Resolve disagreements between DAR Council and CAAC

DAR Council and CAAC

Who they are-

DAR Council

- DoD Chair – Ron Poussard
- Services and Defense Agencies
- NASA

Title 10

CAAC

- GSA Chair – Julia Wise
- Civilian Agencies

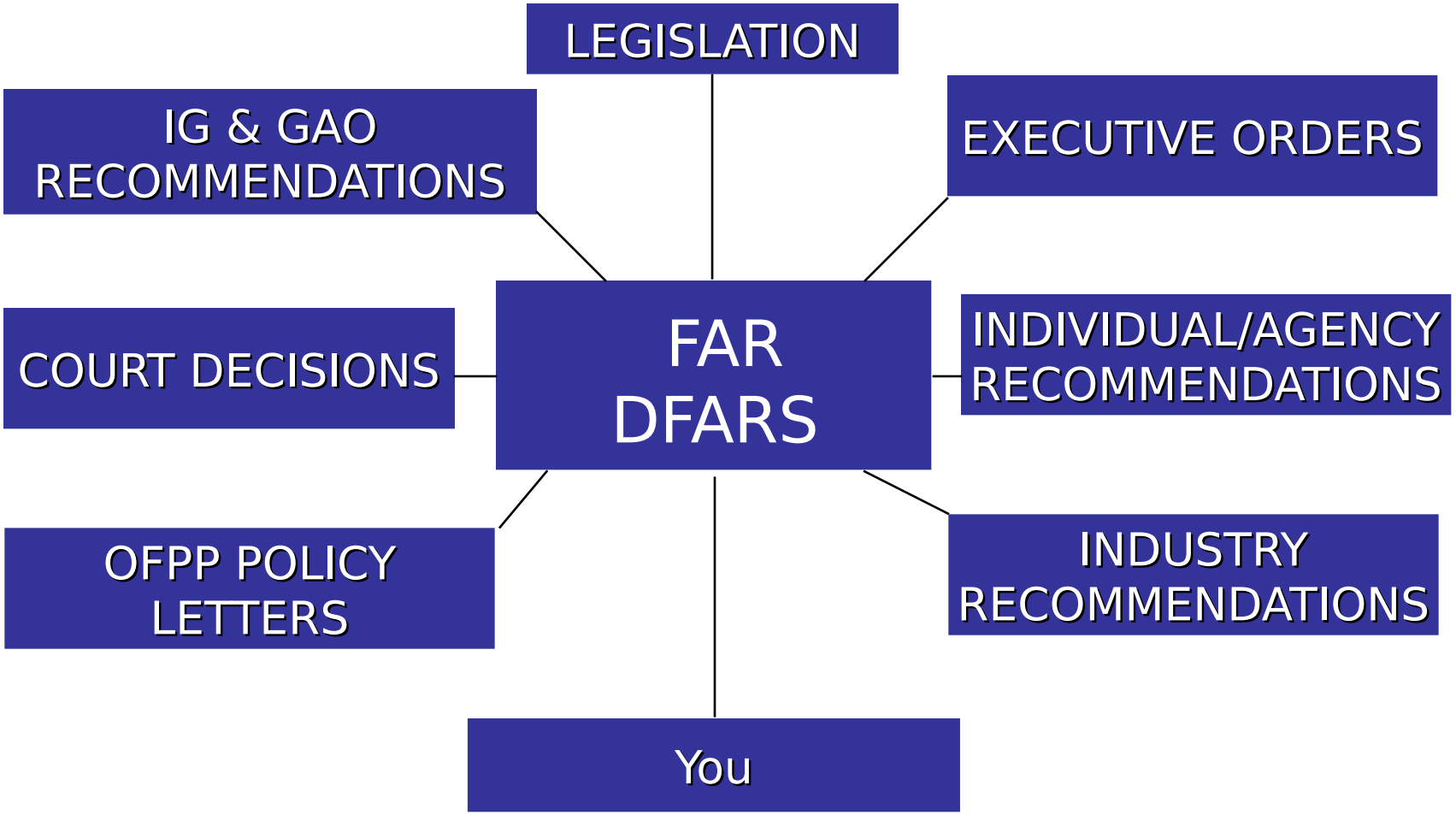
Title 41

DAR Council and CAAC

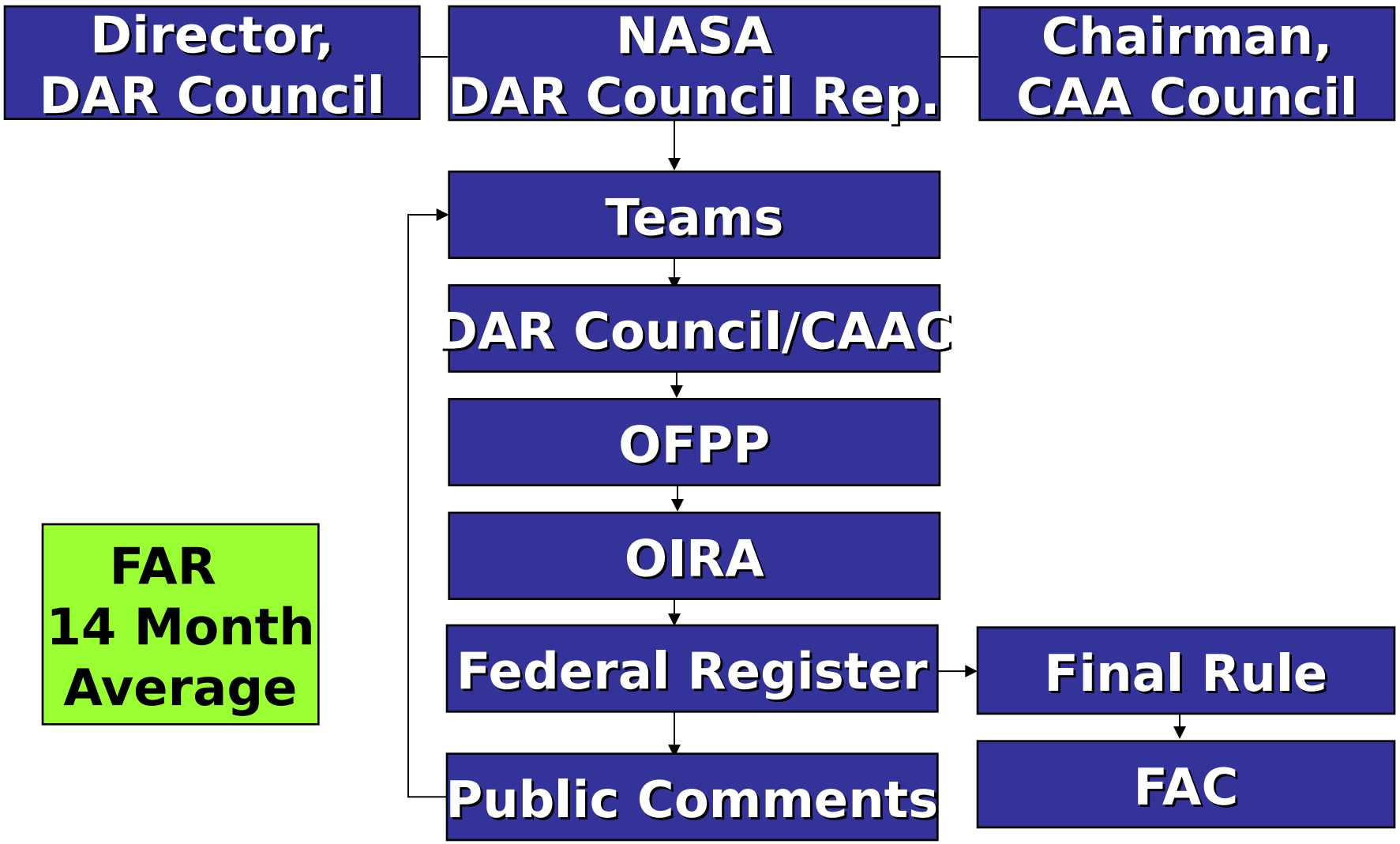
What they do-

- Publish Federal Register (FR) notices soliciting public comments
  - Advance Notice of Public Rulemaking
  - Proposed Rule
  - Interim Rule
  - Final Rule
- Conduct Public Meetings
- Consider all public comments
- Reach agreement on FAR changes

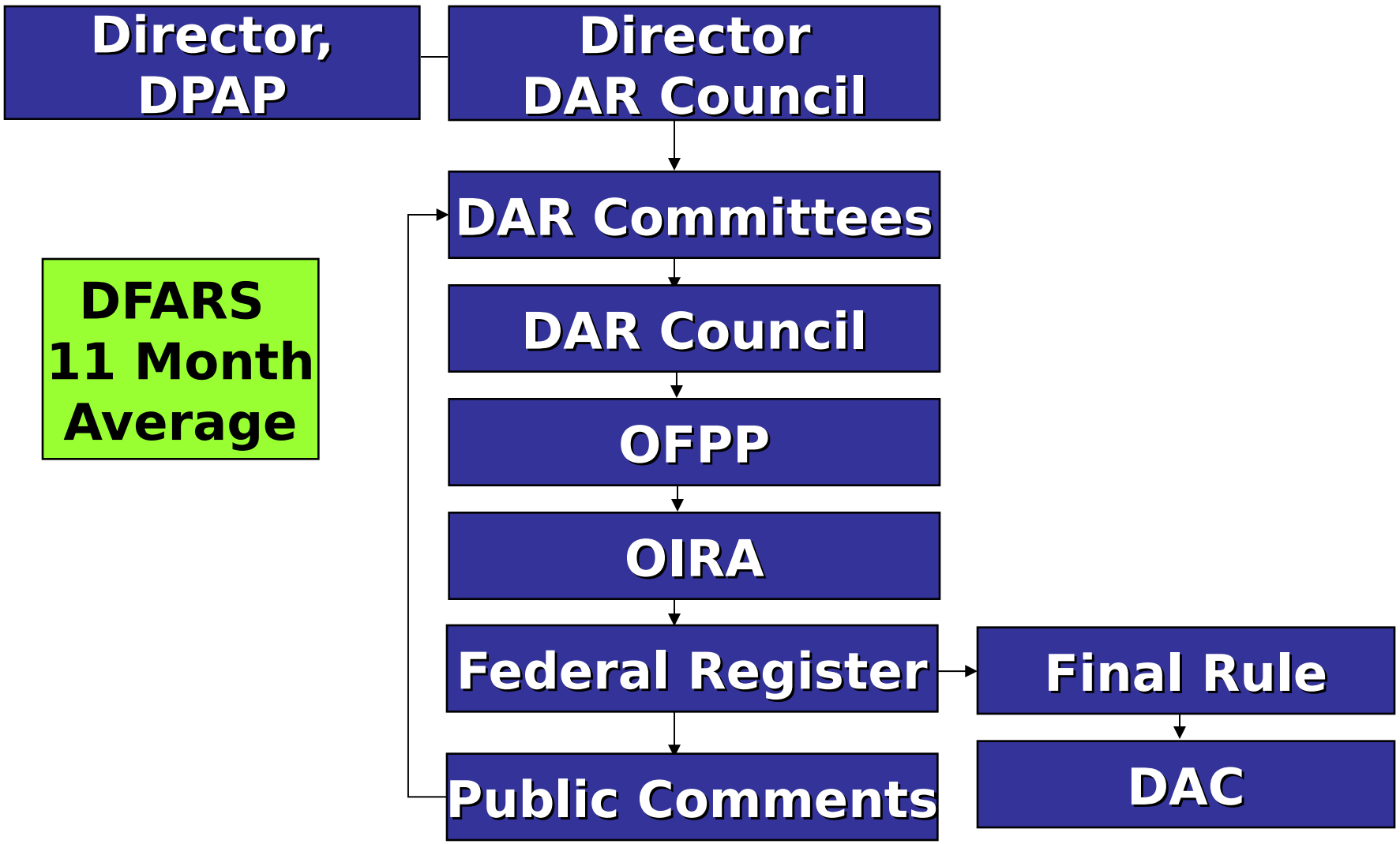
Sources of FAR/DFARS Changes



FAR Change Process



DFARS Change Process



FAR/DFARS Websites

- Link to online FAR/DFARS
- Submit public comments
- Review public comments
- Find ANPRs, proposed and interim rules
- Subscribe to FAR/DFARS News (real time notifications of FACs, public meetings, proposed rules)

FAR - http://www.arnet.gov/far
DFARS - http://www.acq.osd.mil/dpap/dars/darcounc.htm

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ess http://www.acqnet.gov/far/ProposedRules/comments.htm

Federal Acquisition Regulation

Public Comments on Interim and Proposed Rules

(Comments are posted after the comment period has ended)

(Adobe Acrobat is required to view these documents)

(New comments are posted frequently. To assure that you receive the most recent postings, please refresh this page before viewing the comments below.)

View Public Comments

Comments	FAR Case	View FR Document	Closing Date
Federal Technical Data Solution	2004-020	11/01/2004	01/03/2005
Section 508 Micropurchases Exemption	2004-020	10/05/2004	12/06/2004
Telecommunting for Federal Contractors	2003-025	10/05/2004	12/06/2004
Accounting for Unallowable Costs	2004-006	09/28/2004	11/29/2004
Additional Commercial Contract Types	2003-027	09/20/2004	11/19/2004
Applicability of SDB and HUBZone Price Evaluation Factor	2003-015	09/02/2004	11/03/2004
Powers of Attorney for Bid Bonds	2003-029	08/23/2004	10/22/2004
Performance-Based Service Acquisition	2003-018	07/21/2004	09/20/2004
Government Property Rental and Special Tooling	2002-015	07/02/2004	07/15/2004
Share-in-Savings Contracting	2003-008	07/02/2004	08/31/2004
Incentives for Use of Performance- Based Contracting for Services (Interim Rule)	2004-004	06/18/2004	08/17/2004
Payment Withholding	2004-003	05/25/2004	07/26/2004

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Public Comments for **DFARS** Cases

Public Comments

View By Case Number

View By Title

Home

We began posting public comments to this website on February 12, 2001. Comments are posted after the public comment period closes.

Case Number - Title	Company/Organization
0704-0225 - Administrative Matters	
0704-0248 - Material Inspection and Receiving Report	
0704-0272 - Occupational Safety	
0704-0332 - DoD Pilot Mentor Protege Program	
0704-0386 - Small Business Programs	
1999-D028 - Anticompetitive Teaming	
2000-D014 - Ocean Transportation by U.S.-Flag Vessels	
2000-D018 - Changes to Profit Policy	
2000-D020 - Balance of Payments Program	
2000-D023 - Enterprise Software Agreements	
2000-D024 - Utilization of Indian Organizations and Indian Owned Economic Enterprises	
2000-D028 - Subcontract Commerciality Determinations	
2000-D029 - Restriction on Contingent Fees for Foreign Military Sales--Commercial Items	
2000-D301 - Domestic Source Restrictions--Ball and Roller Bearing and Vessel Propellers	
2000-D306 - Performance-Based Service Contracts Using Part 12 Procedures	
2001-D002 - Research and Development Streamlined Contracting Procedures	
2001-D006 - DoD Pilot Mentor-Protege Program	
2001-D012 - Customary Progress Payment Rate for Large Business Concerns	
2001-D013 - Provisional Award Fee Payments	
2001-D013 - Provisional Award Fee Payments	
2001-D017 - Competition Requirement for Purchase of Services Pursuant to Multiple Award	

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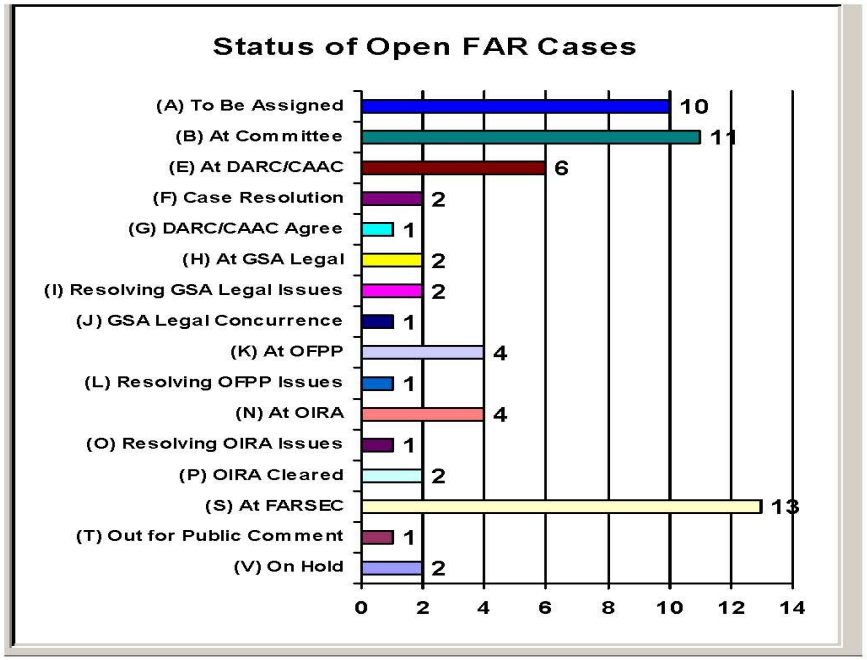
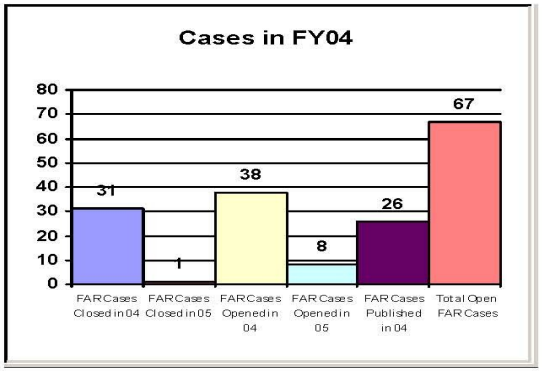
Start 5:22 PM

Cases

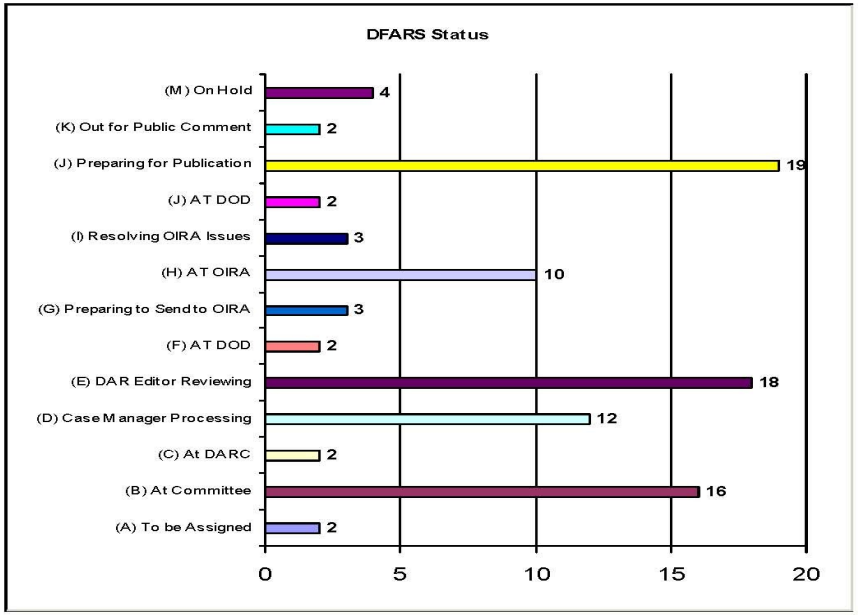
Open FAR Cases

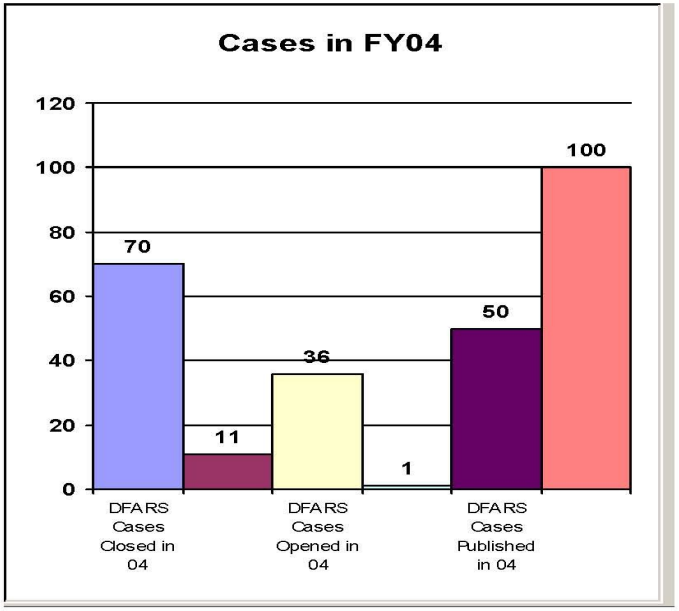




FAC Number	ANPR	Proposed	Interim	Final
FAC 2001-16		1	1	6
FAC 2001-17				1
FAC 2001-18				7
FAC 2001-19			1	
FAC 2001-20			1	
FAC 2001-21			1	
FAC 2001-22				5
FAC 2001-23			1	
FAC 2001-24		1	1	7
FAC 2001-25			2	2
FAC 2001-26			1	5
FAC 2001-27			1	
Notice	3			
Proposed		18		
Total:	3	20	10	33

Open DFARS Cases





Additional Commercial Contract Types (FAR Case 2003-027)

- Why change? Services Acquisition Reform Act of 2003 (SARA) (Section 1423 of Pub. L. 108-136)
- What changed? Amended FASA to expressly authorize the use of T&M/LH contracts for certain categories of commercial services
- Rule status
  - Published ANPR in FR on 09/20/04 (69 FR 56316)
  - Held public meeting on 10/19/04 – about 60 attendees
  - Received roughly 90 comments from 23 commenters
  - Revised rule - about 20 changes based on public comments
- Next step
  - Publish final FAR rule in next FAC

Performance-Based Service Acquisition (FAR Case 2003-018)

- Why change? OFPP's July 2003 report "Performance-Based Service Acquisitions: Contracting for the Future"
- What changed? Clarified terminology, added definitions (PWS and SOO), attempts to give agencies more flexibility for PBSAs
- Rule status
  - Published proposed rule in FR on 07/21/04 (69 FR 43712)
  - Received roughly 60 comments from 18 commenters
  - Revised rule - about 20 changes based on public comments
- Next step
  - Publish final FAR rule in next FAC

Consolidation of Contract Requirements

- Section 801 NDAA FY 2004 (P.L. 108-136)
- DoD specific - - extends bundling-type requirements to consolidations greater than $5 million
- Includes multiple award contracts
- Interim rule effective SEP 17, 2004
- Public comments being reviewed
- DFARS case 2003-D109

Contract Period for Task and Delivery Orders

- Sections:
  - 843 NDAA FY 2004 (P.L. 108-136)
  - 813 NDAA FY 2005 (P.L. 108-375)
- Total period of not more than 5 years (Section 843)
- Base period of up to five years, extensions to a total period of not more 10 years (Section 813)
- Interim DFARS rule effective DEC 15, 2004
- DFARS cases 2003-D097 and 2004-D023

Approval of Service Contracts and Task Orders

- Section 801(b) NDAA FY 2002 (P. L. 107-107)
- Requires the establishment of a structure for the management of procurements of services, specific dollar thresholds, and other criteria for advance approvals of purchases of services
- Proposed interim DFARS rule pending approval by Director, DPAP
- DFARS cases 2002-D024

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Zalerie Moore	AMC

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Conclusion